In the Matter of:

WILLIAM PALUCH, **ARB CASE NO. 07-069**

COMPLAINANT, **ALJ CASE NO. 2007-STA-00021**

v. **DATE: May 31, 2007**

LAKEFRONT LINES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT WITH PREJUDICE

This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (West 2007). William Paluch and Lakefront Lines, Inc. have agreed to settle this case, and on April 23, 2007, they filed a Confidential General Release and Settlement Agreement (Agreement) with the Administrative Law Judge (ALJ).[1]

The ALJ issued a Recommended Order Approving Settlement and Dismissing Case (R. D. & O.) on April 24, 2007. The case is now before the ARB pursuant to the automatic review provisions of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1) (2006). The Board received the R. D. & O. and issued a Notice of Review and Briefing Schedule on May 17, 2007, apprising the parties of their right to

[1] When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the Agreement. However, the Administrative Review Board issues final decisions in STAA cases. 29 C.F.R. § 1978.109(c)(2); s*ee, e.g.*, *Bosanko v. S. Refrigerated Transp., Inc*., ARB No. 06-155, ALJ No. 2005-STA-0043 (ARB Jan. 31, 2007).

submit briefs supporting or opposing the ALJ's recommended decision. Neither party filed a brief. We therefore deem the settlement unopposed under the terms of the R. D. & O.

Under the regulations implementing the STAA, the parties may settle a case at any time after filing objections to the Assistant Secretary's preliminary findings, and before those findings become final, "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board [Board] . . . or the ALJ."[2] Those regulations direct the parties to file a copy of the settlement with the ALJ, the Board, or United States Department of Labor.[3]

We have reviewed the Agreement and concur with the ALJ's determination that it is fair, adequate and reasonable.[4] However, the Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.[5] The Board notes that the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).[6] FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.[7] Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information.[8]

Furthermore, if the provisions on page 1 of the Agreement were to preclude Paluch from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable "gag" provisions.[9]

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[2] 29 C.F.R. § 1978.111(d)(2).

[3] *Id.*

[4] R. D. & O. at 1. The record contains the Agreement (signed by Paluch), a copy of a check from Lakefront Lines in the amount agreed to by the parties, and correspondence from Lakefront Lines to the ALJ indicating its desire to settle the case.

[5] Agreement page 1**.**

[6] 5 U.S.C.A. § 552 (West 2006).

[7] *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv*., ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996).

[8] 29 C.F.R. § 70 *et seq*. (2006).

[9] *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-33, slip op. at 6 (ARB Nov. 10, 1997); *Conn. Light & Power Co. v. Sec'y, U.S. Dep't of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting

Additionally, we construe the governing law provision, on page 2 of the Agreement, as not limiting the authority of the Secretary of Labor and any federal court, which shall be governed in all respects by the laws and regulations of the United States.[10]

The parties have agreed to settle Paluch's claim. Accordingly, as construed, we **APPROVE** the Agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

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complainant's ability to provide regulatory agencies with information; improper "gag" provision constituted adverse employment action).

[10] *Phillips v. Citizens Ass'n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).